



Administrative Tribunal

Distr.
LIMITED

AT/DEC/621
9 November 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 621

Case No. 671: BERREZOUG

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Jerome Ackerman, President; Mr. Luis de
Posadas Montero; Mr. Mikuin Leliel Balanda;

Whereas at the request of Annie K. Berrezoug, a former staff
member of the United Nations, the President of the Tribunal, with
the agreement of the Respondent, successively extended to
28 February and 31 May 1992, the time-limit for the filing of an
application to the Tribunal;

Whereas, on 31 May 1992, the Applicant filed an application
requesting the Tribunal, inter alia:

"...

- (a) to rescind the decision of the Secretary-General
to maintain his contested decision and to take
no further action;
- (b) to find and rule that the Joint Appeals Board
erred as a matter of law in deciding to make no
recommendation in support of the Applicant's
appeal;
- (c) to find and rule that the conclusions of the
Joint Appeals Board were flawed in that they
failed to take into consideration the substance
of the Applicant's appeal...
- (d) to order the Respondent to submit the
Applicant's post for reclassification to the
Professional level with retroactive effect to

1 January 1985 and to grant the Applicant all her rights and entitlements as incumbent;

- (e) to award the Applicant appropriate compensation for the actual, and consequential and moral damages suffered by the Applicant as a result of the Respondent's action or lack thereof, equivalent to the difference between her existing salary and entitlements and those at the appropriate step of the P-2 level, including applicable pension coverage, retroactive to 1 January 1985;
- (f) to further award the Applicant the sum of \$50,000.00 for the moral injuries suffered by her and for the damage to her career and reputation occasioned by the Respondent's actions;
- (g) to fix, pursuant to article 9, paragraph 1 of the Statute and Rules of the Tribunal, the amount of compensation to be paid in lieu of specific performance at \$100,000.00, calculated as follows:
 - Lost salary, allowances and benefits;
 - Lost pension entitlements;
 - Moral damages and damages to her career;
- (h) to award the Applicant, as costs, the sum of \$3,000.00."

Whereas, the Respondent filed his answer on 6 August 1992;

Whereas the Applicant filed written observations on 7 October 1992;

Whereas, on 11 October 1993, the Applicant submitted an additional statement and further documents;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 4 May 1971, as an Administrative Clerk at the G-3 level, on a three-month fixed-term appointment. She served on a series of fixed-term appointments until 1 May 1972, when she received a probationary

appointment. On 1 May 1974, she was granted a permanent appointment and was assigned to the World Food Conference as an Acting Personal Assistant. From 8 October 1974 to 1 February 1975, she was granted a special post allowance to the G-4 level. The Applicant was reassigned within the Department of Economic and Social Affairs and on 1 October 1975, she was promoted to the G-4 level, as a Senior Administrative Clerk. On 1 April 1978, the Applicant was transferred to the Department of Technical Co-operation for Development (DTCD). She was promoted to the G-5 level, with effect from 1 January 1985 and her functional title was changed to Fellowships Assistant. On 9 May 1988, the classification level of the Applicant's post was changed from G-5 to G-6, and the Applicant was promoted to the G-6 level, with retroactive effect from 1 January 1985.

In July 1982, the International Civil Service Commission had approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for those seven-levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

In accordance with the administrative instruction, a description of the post encumbered by the Applicant was submitted for initial classification to the Classification Service. The Applicant's post was classified at the G-5 level, with the functional title of Fellowships Assistant.

On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff, in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related

appeals procedure." The New York General Service Classification Appeals and Review Committee (NYGSCARC) was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

On 13 June 1986, the Applicant, together with another General Service staff member performing similar functions, appealed the initial classification of their posts. They argued that "the functions of the jobs were not properly reflected in the previous job description" and that "similar functions in the same Department are carried out by officers at the Professional level of P-2 and above".

NYGSCARC reviewed the appeal and recommended that the level of the post be maintained. On 31 January 1987, the Assistant Secretary-General for Human Resources Management (OHRM) informed the Applicant that he had approved NYGSCARC's recommendation.

In May 1987, the Assistant Secretary-General, OHRM, established a Working Group, pursuant to information circular ST/IC/87/24, to carry out an overall review of the outcome of the initial classification exercise and "focus primarily on the managerial and organizational problems that the classification exercise may have created." Further to the Working Group's recommendation, the Assistant Secretary-General, OHRM, instructed the Classification Service to carry out a review of posts identified by departments as examples of inconsistent classification ("the inconsistency review"). The post encumbered by the Applicant was included in the list of posts identified by DTCD.

On 3 November 1987, the Applicant lodged a complaint with the Panel on Discrimination and Other Grievances (the Panel on Discrimination) alleging that her post should have been classified at the professional level.

As a result of the review by the Classification Service and in accordance with the recommendations of the Working Group

conducting the inconsistency review, on 9 May 1988, the Assistant Secretary-General, OHRM, approved the reclassification of the post encumbered by the Applicant from the GS-5 to the GS-6 level, with retroactive effect from 1 January 1985. On 28 June 1988, the Applicant and another staff member wrote to the Assistant Secretary-General, OHRM, requesting "a thorough investigation into our functions to determine the level which seems to have been reached merely on speculation and not facts."

In a memorandum dated 10 February 1989, the Coordinator of the Panel on Discrimination informed the Assistant Secretary-General, OHRM, inter alia, that the Applicant and the other staff member had "...put forth Professional job descriptions and descriptions of their functions...". The Panel recommended that "...an unbiased job survey and assessment should be undertaken ..." and that "a job audit be undertaken without further delay".

On 28 April 1989, the Assistant Secretary-General, OHRM, advised the Chairman of the Panel on Discrimination that, under its terms of reference, it could "only determine whether the classification exercise was carried out impartially from a procedural point of view, in accordance with established guidelines". He observed that the Panel on Discrimination's "recommendation de facto has a connotation of substantive review and would mean re-opening the classification process for these posts". It would therefore "create a situation discriminatory with regard to the other staff members who were in the same situation but who did not make recourse to the Panel...".

On 30 March 1990, the Applicant requested the Secretary-General to review that administrative decision. Having received no reply, on 25 June 1990, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 30 August 1991. Its conclusion and recommendation read as follows:

"Conclusion and recommendation

20. In the Panel's view, the Assistant Secretary-General, OHRM, had acted within his discretionary authority when he decided not to act on the recommendation of the Panel on Discrimination and Other Grievances and to convey his decision to the Coordinator of the Panel. In brief, the Panel does not consider the administrative decision of the Assistant Secretary-General, OHRM, as constituting a non-observance of the appellant's terms of appointment or any condition of pertinent regulations and rules.

21. In view of the aforesaid, the Panel unanimously decided to make no recommendation in support of this appeal".

On 4 September 1991, the Acting Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the Board's report and informed her that the Secretary-General had decided to maintain the contested decision and "to take no further action on [the] case.

On 31 May 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent did not fulfil his obligation to ensure that the classification of her post was established in a fair and objective manner.

2. The JAB erred as a matter of law in "narrowly" deciding the Applicant's appeal on the limited question of whether the Respondent was required to accept recommendations of the Panel on Discrimination.

3. The Respondent has "arbitrarily and without justification" rejected the recommendation of the Panel on Discrimination.

Whereas the Respondent's principal contentions are:

1. The instructions governing the classification procedures do not oblige the Respondent to conduct a job audit.
2. Reports of the Panel on Discrimination constitute recommendations which the Respondent may freely appraise. Rejection of the Panel's recommendation did not violate the Applicant's rights.

The Tribunal, having deliberated from 28 October to 9 November 1993, now pronounces the following judgement:

- I. The Applicant's post was classified at the G-5 level and she appealed against this decision, maintaining that her post should be classified in the Professional category. Her appeal was considered by the competent bodies and rejected. She did not seek review by the Tribunal. However, the Applicant complained to the Panel on Discrimination and Other Grievances (the Panel on Discrimination).
- II. Before the Panel on Discrimination finished its investigation and submitted its report, the classification of the Applicant's post was again considered by the "inconsistency review" Working Group set up under information circular ST/IC/87/24. As a result, her post was upgraded to the G-6 level.
- III. The Applicant was not satisfied with this classification. Although she announced her intention of requesting a review, she never did so.
- IV. In its report, the Panel on Discrimination recommended that, in view of certain elements which might warrant classifying the post in the Professional category, an audit should take place.
- V. The Assistant Secretary-General for Human Resources Management, after considering the Panel on Discrimination's report,

decided not to take any action on its recommendation, because this would be tantamount to reopening the classification process for this purpose and would accord the Applicant yet another review, a remedy not open to other staff members.

The Applicant comes before the Tribunal appealing this decision and asks that an oral proceeding be held. The Tribunal finds that the information before it is adequate for resolution of this case and therefore denies the request.

In this context, the Tribunal notes:

(a) That as far as the classification of her post is concerned, the Applicant availed herself of the appeals process, but did not submit a timely application to the Tribunal. Accordingly, the validity of the classification is not properly before the Tribunal;

(b) That the authority of the Panel on Discrimination does not encompass recommendations regarding the substantive elements of the classification process;

(c) That acceptance of the Panel on Discrimination's recommendations is not mandatory. While the Respondent is bound to consider them, he is not bound to follow them. He may, in the reasonable exercise of his discretion, decline to do so;

(d) That, according to the current Regulations and Rules, - and the jurisprudence of the Tribunal, the decision to conduct an audit as part of the classification process is left to the discretion of the bodies involved in such process;

(e) That, holding an audit, as recommended by the Panel on Discrimination, would, under the circumstances of the case, be tantamount to reopening the classification process;

(f) That the refusal by the Respondent to adopt the Panel on Discrimination's recommendation is the only issue before the Tribunal;

(g) That the other points raised by the Applicant in her application, namely those connected with the outcome of the "inconsistency review" are, in essence, an untimely attempt by the

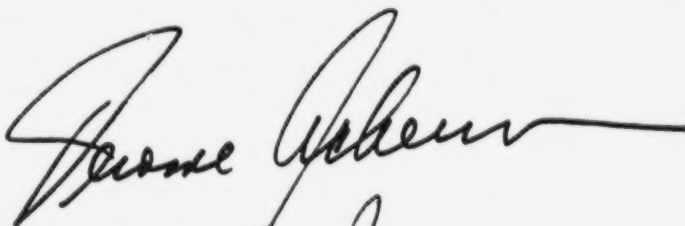
Applicant to have the Tribunal consider matters that are not properly before it, and which are therefore alien to the case.

VI. For the foregoing reasons, the Tribunal finds that the Respondent acted within his competence in not following the Panel on Discrimination's recommendation.

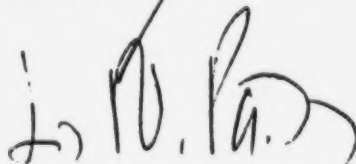
VII. Accordingly, the Tribunal rejects the Applicant's pleas.

(Signatures)

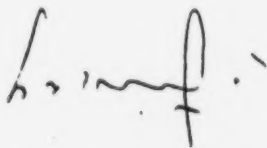
Jerome ACKERMAN
President



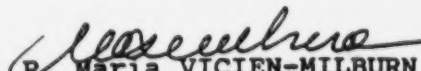
Luis de POSADAS MONTERO
Vice-President



Mikuin Leliel BALANDA
Member



New York, 9 November 1993



R. Maria VICIEN-MILBURN
Executive Secretary